

The Honorable James L. Robart

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

FINITO SERVICES LLC dba SUNSPOT INNS,  
RESORTS & VACATION RENTALS,

Plaintiff,

v.

COMFY SUNRISE VILLA LLC; and  
GENWANG KEVIN WEN, individually,

Defendants.

Civil Action No. 2:11-cv-00774-JLR

**ANSWER OF DEFENDANTS COMFY  
SUNRISE VILLA AND GENWANG KEVIN  
WEN TO PLAINTIFF'S COMPLAINT  
WITH COUNTERCLAIM**

**DEMAND FOR JURY TRIAL**

Defendants COMFY SUNRISE VILLA LLC and GENWANG KEVIN WEN (Collectively "Defendants"), by and through their counsel, hereby answer the Complaint of FINITO SERVICES LLC dba SUNSPOT INNS, RESORTS & VACATION RENTALS ("Sunspots" or "Plaintiff") as follows:

**I. PARTIES**

1. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the same.

2. Admitted.

1           3.     Admitted only that Mr. Wen is a member of Comfy Sunrise Villa LLC, and that Mr.  
2     Wen participated in the management, control and marketing of Sunrise Villa, but as further noted  
3     below all liability is denied.

## 4                                   **II. JURISDICTION AND VENUE**

5           4.     Admitted that this action purports to state claims under the copyright laws. To the  
6     extent that this paragraph contains allegations of law, no response is required.

7           5.     Admitted that venue is proper in this jurisdiction.

## 8                                   **III. SUNSPOT'S BUSINESS AND COPYRIGHTS**

9           6.     Admitted only that Sunspots acted as booking and management agent for  
10    Defendants' property known as Sunrise Villa, located in Leavenworth, Washington from  
11    February 18, 2005 to February 18, 2006, pursuant to a written booking agreement. Defendants  
12    are without knowledge sufficient to form a belief as to the full extent of Plaintiff's current  
13    business activities, and therefore deny the allegations regarding the same. On information and  
14    belief, however, Sunspots is not a network of independently owned inns, resorts and vacation  
15    rental management companies; rather, it is a rental management company owned and controlled  
16    by a husband and wife team, William May and Penny Taylor.

17           7.     Admitted only that while Sunspots acted as booking and management agent, both  
18    Defendants and Plaintiff supplied photographs to each other which were to be used for marketing  
19    Sunrise Villa on the Internet. Plaintiff's complaint does not identify the photographs at issue or the  
20    circumstances under which they were taken with specificity, and therefore Defendants deny that  
21    the photographs are owned by Plaintiff or are the subjects of the copyright registrations identified  
22    23    24    25    26

1 and demand proof of the same. By way of further response, Defendants deny that Plaintiff did not  
2 license the Defendants to use photographs of the Sunrise Villa property.

3 8. Denied. Defendants' use of photographs of Sunrise Villa on third party web sites  
4 was licensed and specifically authorized by Plaintiff. It is denied that Defendants used any  
5 photographs in an unauthorized manner for commercial gain.

6 9. Denied.

7  
8 10. Admitted only that when Plaintiff notified Defendants in May 2008 that photographs  
9 (which Plaintiff did not identify) allegedly owned by Plaintiff were being infringed, Defendants  
10 attempted to remove all such photographs. Admitted further that when Plaintiff demanded  
11 payment of a grossly inflated amount for the alleged use of old and outdated photographs,  
12 Defendants did not pay the amount demanded. All other allegations are denied.

13  
14 **IV. CAUSE OF ACTION – COPYRIGHT INFRINGEMENT**

15 11. Defendants incorporate their responses to paragraphs 1-10, above, as though fully  
16 set forth.

17 12. Denied.

18 13. Denied.

19 14. Denied.

20 15. Denied.

21  
22 16. The allegations contained in this paragraph are conclusions of law, to which no  
23 response is required. By way of further response, although Defendants deny infringement, any  
24 alleged infringement commenced before the copyrights in the photographs were registered, and  
25  
26

1 registration, if any, was not done within three months of publication of the photographs, therefore  
2 statutory damages and attorney fees are not available to Plaintiffs.

3  
4 **V. AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6  
7 Plaintiff has failed to state a claim upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred by the applicable statute of limitations.

10 **THIRD AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred by the doctrine of laches and/or waiver.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred by the doctrine of equitable estoppel.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred by implied and/or express license.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred by the doctrine of unclean hands.

18 **COUNTERCLAIM**

19 **PARTIES TO COUNTERCLAIM**

20  
21 1. Plaintiff/Counterclaim Defendant Finito Services LLC ("Sunspots") is a  
22 Washington limited liability company doing business in Leavenworth, Washington and in King  
23 County, Washington.  
24  
25  
26

3. This Court has jurisdiction over the subject matter of this counterclaim pursuant to 28 U.S.C. §§1331 and 1338. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the claims occurred in this district, and because the parties reside in and have transacted business in the Western District of Washington.

4. This Court may declare the rights and legal obligations of the parties to this action pursuant to 28 U.S.C. §§2201 and 2202, because this action is based on an actual case and controversy within the Court's jurisdiction.

5. There is an actual and justiciable controversy over whether Defendants/Counterclaim Plaintiffs have infringed Plaintiff/Counterclaim Defendant's alleged copyrights, whether those copyrights have been validly registered, whether the claims asserted by Plaintiff/Counterclaim Defendants are barred by the statute of limitations and/or by the doctrines of laches, equitable estoppel, waiver unclean hands and license, and whether Plaintiff is entitled to any damages.

6. Sunspots on the one hand, and Mr. Wen and his wife on the other hand, were parties to a written Booking Agreement effective February 18, 2005 concerning the property known as “Sunrise Villa,” which was owned by the Wens.

7. Mr. Wen and his wife validly terminated the Booking Agreement effective February 18, 2006.

1           8.     While the Booking Agreement was in effect and for a period of time thereafter,  
2     Sunspots published the photographs of Sunrise Villa at issue on its website  
3     <http://www.leavenworth.ws>, and allowed the public unlimited access to those photos.

4           9.     After the valid termination of the Booking Agreement, Sunspots gave express  
5     and/or implied permission to Mr. Wen to continue using the photographs of Sunrise Villa that  
6     had been used to market the property.

7           10.    Sunrise Villa was extensively remodeled in 2007, and after the remodel in 2007,  
8     Defendants/Counterclaim Plaintiffs did not use any old photographs to market the property.

9           11.    Sunspots, by its former counsel, wrote to Defendants/Counterclaim Plaintiffs on  
10    May 13, 2008, complaining of unspecified instances of alleged copyright infringement.  
11    Defendant Mr. Wen performed an Internet search and asked the third party website located by  
12    that search to remove old photographs of Sunrise Villa. Further, Mr. Wen asked Sunspots to  
13    identify any other instances of old photographs appearing on the Internet. Sunspots did not  
14    respond to this request, and the Wens legitimately considered the matter to be resolved.  
15    16

17           12.    On information and belief, Sunspots knew of additional instances in which old  
18    photographs of Sunrise Villa were still visible on third party websites, and intentionally did not  
19    notify the Wens of this for the purpose of creating a copyright infringement lawsuit to collect  
20    inflated alleged damages.

21           13.    After the valid termination of the Booking Agreement, Sunspots continued to list  
22    Sunrise Villa as a property that was managed by Sunspots, knowing that this was not the case,  
23    and when the public sought further information about the property, Sunspots would indicate the  
24    property was not available, and offer another in its stead (*i.e.* a "bait and switch").  
25    26

14. After notice of the termination of the Booking Agreement, Sunspots collected money from damage deposits of former renters and, on information and belief, from collection actions against tenants of Sunrise Villa, charged the Wens for the same, and did not reimburse the Wens for the money ultimately collected from the renters.

15. While the Booking Agreement was in effect, Sunspots charged tenants and/or the Wens for cleaning fees in excess of the amounts actually paid to the cleaners, and kept the overage for itself.

16. On information and belief, Sunspots was not properly licensed as a real estate broker at the time Sunspots solicited the Wens to act as booking agent for Sunrise Villa.

17. On information and belief, the photographs at issue were not properly registered with the Copyright Office.

18. Defendants/Counterclaim Plaintiffs incorporate their responses to the allegations in the Complaint as though fully set forth.

#### **COUNTERCLAIM FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

19. Defendants/Counterclaim Plaintiffs incorporate the allegations set forth above, as well as their responses to the allegations of the Complaint.

20. Defendants/Counterclaim Plaintiffs are entitled to a declaration that:  
 (1) Defendants have not infringed any copyrights that may be held by Plaintiff; (2) Plaintiff's claims are barred by the doctrines of estoppel, waiver, laches and unclean hands; (3) Plaintiff's claims are barred by the statute of limitations; (4) Any use of the photographs was *de minimus* and/or licensed; (5) Plaintiff is liable to the Wens for costs, attorney fees and any further relief deemed appropriate by the Court.

**PRAYER FOR RELIEF**

For all of these reasons, Defendants respectfully request the following relief:

1. That judgment be entered in favor of Defendants and against the Plaintiff with respect to all claims raised in Plaintiff's Complaint.
2. That Defendants be awarded judgment with respect to all claims raised in the Defendants' Counterclaim.
3. That Defendants recover their reasonable attorney fees and costs incurred in this lawsuit to the fullest extent allowed by law and/or contract.
4. A declaration that Plaintiff's lawsuit is without merit and filed in bad faith.
5. That the Court award such other and further relief as is just and equitable under the circumstances.

Dated this 14th day of June, 2011

Respectfully submitted,

s/ Regina Culbert

Regina Culbert, WSBA #30213

Paul H. Beattie, WSBA # 30277

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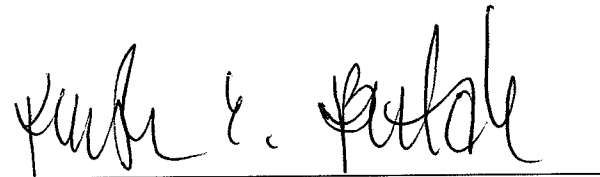
**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of June, 2011, I caused to be served the foregoing  
**ANSWER OF DEFENDANTS COMFY SUNRISE VILLA AND GENWANG KEVIN  
WEN TO PLAINTIFF'S COMPLAINT WITH COUNTERCLAIM** on the following  
persons at the following address by the indicated method:

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by:

<input type="checkbox"/>	U.S. Postal Service, ordinary first class mail
<input type="checkbox"/>	U.S. Postal Service, certified or registered mail,
<input type="checkbox"/>	return receipt requested
<input type="checkbox"/>	hand delivery to:
<input type="checkbox"/>	facsimile
<input checked="" type="checkbox"/>	electronic service through the CM/ECF court system
<input type="checkbox"/>	other (specify) Email to: <a href="mailto:lowe@blgip.com">lowe@blgip.com</a>

  
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Kayla E. Butcher